

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

**IN RE PAYMENT CARD  
INTERCHANGE FEE AND MERCHANT  
DISCOUNT ANTITRUST LITIGATION**

**No. 05-md-01720 (MKB) (JO)**

**This Document Applies to:**

***Luby's Fuddruckers Restaurants, LLC v.  
Visa Inc., et al.*, No. 17-cv-04555 (E.D.N.Y.)  
(MKB) (JO).**

**STIPULATION AND PROPOSED ORDER**

WHEREAS, plaintiff commenced an action captioned *Luby's Fuddruckers Restaurants, LLC v. Visa Inc., et al.*, No. 2017-11213 (Tex.), which was removed to federal court and which the Judicial Panel on Multi-District Litigation transferred to this Court for pretrial proceedings in MDL 1720, *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation*, No. 05-md-01720 (E.D.N.Y.), and which action is now individually referenced on this Court's docket as No. 17-cv-04555 (E.D.N.Y.) (the "Luby's Action");

WHEREAS, plaintiff filed a motion for remand that Judge Orenstein denied in a report and recommendation, which Judge Brodie affirmed in a memorandum and order filed on September 18, 2018;

WHEREAS, plaintiff and defendants in the Luby's Action have been propounding discovery requests and producing documents and data to each other; and

WHEREAS, plaintiff and defendants in the Luby's Action wish to stay the Luby's Action, subject to the production of certain discovery, so that the parties may avoid potentially unnecessary discovery and other obligations.

NOW THEREFORE, IT IS HEREBY STIPULATED AND AGREED, subject to the approval of the Court, that in the Luby's Action:

1. Plaintiff shall produce to defendants by April 19, 2019, or within such time as the parties in the Luby's Action may otherwise agree, and to the extent not already produced: (a) all contracts or agreements relating to plaintiff's acceptance or processing of payment card transactions; (b) the assignments of claims to plaintiff referenced in plaintiff's second amended complaint; (c) reasonably available documents sufficient to show for each year from 2004 to 2018 the net sales and interchange (or merchant discount) attributable to Visa- and Mastercard-branded card transactions at the store locations that plaintiff has identified; and (d) electronically stored information for agreed-upon custodian(s) and search terms.

2. The Visa defendants shall produce to plaintiff by April 10, 2019, or within such time as plaintiff and the Visa defendants may otherwise agree, the Visa defendants' reasonably available annual net sales and interchange data for each year from 2004 to 2018 attributable to transactions at the store locations that plaintiff has identified.

3. The Mastercard defendants shall produce to plaintiff by April 10, 2019, or within such time as plaintiff and the Mastercard defendants may otherwise agree, the Mastercard defendants' reasonably available annual net sales and interchange data for each year from 2004 to 2018 attributable to transactions at the store locations that plaintiff has identified.

4. Except as provided in paragraphs 1-3 above, all discovery and other proceedings in the Luby's Action shall be stayed until and including August 30, 2019.

5. The foregoing stay shall be without prejudice to the right of any party to the Luby's Action (a) to lift the stay upon providing notice to the Court and the parties to the Luby's

Action, in which case the stay shall be lifted five business days thereafter, and (b) to seek to maintain the stay if another party lifts the stay.

6. Plaintiff shall not (a) seek any additional discovery from any defendant in MDL 1720 or any current or former employee of any defendant in MDL 1720 (except through contention interrogatories or requests for admission as provided in paragraph 7b below), or (b) seek to re-depose the expert of any defendant in MDL 1720 who is deposed prior to the lifting of the stay (except as provided in paragraph 7c below).

7. In the event that the foregoing stay is lifted:

a. Plaintiff shall produce promptly and to the extent not previously produced: (i) written responses and objections to all document requests, interrogatories, and requests for admission, (ii) organizational charts or other documents sufficient to show plaintiff's organizational structure in relevant areas, (iii) documents and information responsive to reasonable discovery requests (consistent with agreed-upon custodian lists and search terms), and (iv) employees or former employees within the plaintiff's control for any deposition that a defendant may reasonably request.

b. Plaintiff and defendants may serve contention interrogatories and requests for admission on each other, and shall respond thereto, on the same terms and schedule to which defendants have agreed with other plaintiffs in MDL 1720, or, in the event the stay is lifted after that time, on an alternative schedule as agreed by the parties to the Luby's Action or permitted by the Court.

c. Defendants reserve the right to supplement their expert reports with any discovery produced by plaintiff, including as to damages, in which case the plaintiff in the

Luby's Action may, if reasonably necessary, depose those experts in the Luby's Action as to the supplements to their expert reports only.

8. All other deadlines ordered by the Court in MDL 1720 shall remain unchanged, and no party shall use this stipulation and order as a basis to extend any other deadline in MDL 1720.

Dated: March 27, 2019.

Respectfully submitted,

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**SO ORDERED:**

Dated:

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United States District Judge